IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 153 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHIMANBHAI SURABHAI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MS KD PARMAR for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/03/2001

ORAL JUDGEMENT

#. Heard learned counsel for the petitioner.

#. Rule. Mr.R.C.Kodekar, APP waives service of Rule on behalf of respondents. Looking to the nature of the case and on the joint request of the learned counsel for the parties, the matter is taken up for final hearing.

#. The application filed by the petitioner-convict prisoner for furlough leave was came to be decided under order dated 15.1.2001 by the I.G.(Prison), Gujarat State, Ahmedabad. This order reads as under :-

"With above subject and reference, informed to you that District Police Officer, Anand informed that suritor is ready with regard to furlough leave of Chimanbhai Surabhai. But Sarpanch of the Gram Panchayat is not recommended and showing possibility of breach of peace.

Therefore, if prisoner wants to give surety in other place, pleased to send proposal to concerned District Police Officer".

#. It is not a case where the police submitted adverse report against the petitioner. Reading of this order, I find that the police has reported that suritor is ready with regard to furlough leave of the petitioner. But it is stated that Sarpanch, Gram Panchayat has not recommended and shown possibility of breach of peace. The prisoner was given option to give surety in other place.

#. Rule 4 of the Bombay furlough and Parole Rules, 1959 provides the categories of the prisoners who shall not be considered for release on furlough leave and I do not find anything therein that the Sarpanch of the Gram Panchayat has any authority to report adverse against the petitioner and which can be taken as a ground to reject his furlough application. Category (4) of Rule 4 of the aforesaid Rules, reads as under :-

"(4) Prisoners whose release is not recommended in Greater Bombay by the Commissioner of Police and elsewhere, by the District Magistrate on the ground of public peace and tranquility."

#. Only in case where the release of prisoner is not recommended by District Magistrate on the ground of public peace and tranquility based on police report it can be ground for rejection of the furlough leave but where the Sarpanch has not recommended the release of the petitioner on public peace and tranquility it is not a ground to reject the application for furlough leave. The learned counsel for the petitioner on being put by the

court agreed to furnish cash surety of Rs.25,000/= by the petitioner. This amount of Rs.25,000/= be deposited by the petitioner in this court and the Registry shall give receipt of the deposit thereof. The I.G.(Prison), after verifying the genuineness and correctness of the receipt, the petitioner be released on furlough leave. In case, the petitioner surrenders within the time after availing the furlough he shall be entitled for withdrawal of this amount from this court for which he is granted liberty to apply for the same to this court and as and when such an application is filed, the registry is directed to place this matter along with the main papers.

Subject to the aforesaid direction, the Special Criminal Application and Rule stand disposed of with no order as to costs.

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